IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JOHN W. MOORE,

ORDER

Plaintiff,

09-cv-492-bbc

v.

Judge STUART SCHWARTZ and
U.S. Attorney for the Western District
of Wisconsin STEPHEN SINNOTT,[1]

Defendants.

- -

Plaintiff John Moore, a resident of Madison, Wisconsin, has filed this civil action for injunctive relief, alleging violations of his constitutional rights under the First and Sixth Amendments. He has asked for leave to proceed without prepayment of fees and costs and has supported his request with an affidavit of indigency. Plaintiff also has filed a motion for a permanent injunction. Dkt. #3.

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[1] Plaintiff incorrectly named "Matt Sinnott" as the U.S. Attorney for the Western District of Wisconsin. The acting U.S. Attorney for this district is Stephen Sinnott. I have revised the caption accordingly.

The standard for determining whether plaintiff qualifies for indigent status is the following:

- From plaintiff's annual gross income, the court subtracts $3700 for each dependent excluding the plaintiff.
- If the balance is less than $16,000, the plaintiff may proceed without any prepayment of fees and costs.
- If the balance is greater than $16,000 but less than $32,000, the plaintiff must prepay half the fees and costs.
- If the balance is greater than $32,000, the plaintiff must prepay all fees and costs.
- Substantial assets or debts require individual consideration.

From plaintiff's affidavit of indigency, I find that he has an annual gross income of $3,840. He has no dependents and no substantial assets or debts. Therefore, plaintiff qualifies financially to proceed without prepaying the fees and costs of filing his action. However, plaintiff should be aware that he is obligated to pay the $350 filing fee, even if he does not presently have funds with which to pay the fee. 28 U.S.C. § 1915(b)(1).

The next step is determining whether plaintiff's proposed action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously.

Haines v. Kerner, 404 U.S. 519, 521 (1972). After doing that, I conclude that plaintiff may not proceed on his claims against either defendant.

I draw the following allegations of fact from plaintiff's complaint and state court records available electronically.

ALLEGATIONS OF FACT

On April 27, 2009, plaintiff John Moore was charged with "trespass to land—remain after notice" in violation of Wis. Stat. § 943.13(1m)(b) in the Circuit Court for Dane County, case no. 2009FO1317. Plaintiff pleaded not guilty. He filed this action on August 6, 2009. On August 12, 2009, defendant Judge Stuart Schwartz entered a default judgment against plaintiff and ordered him to pay a fine.

DISCUSSION

A. Defendant Judge Schwartz

Plaintiff alleges that defendant Judge Stuart Schwartz violated plaintiff's rights under the Sixth Amendment to the United States Constitution by proceeding to trial on the unauthorized presence charge and issued an order that did not contain his signature, in violation of plaintiff's First Amendment rights. Plaintiff asks that the circuit court be

"enjoined to cease and desist from usurping Plaintiff's authorized presence under Amendment 6 US Constitution." Dkt. #1.

In effect, plaintiff is asking this court to intervene in state judicial proceedings, something that is impermissible under our federal system of government. As a general rule, district courts are required to abstain from issuing injunctions against ongoing state court proceedings. Younger v. Harris, 401 U.S. 37 (1971) ("the normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions"). If plaintiff believes that his rights are being violated in the context of his state court case, he may raise his concerns with Judge Schwartz or file an appeal in state court. What he cannot do is make an end run around the state judicial process by filing an action in federal court. General Auto Service Station LLC v. City of Chicago, 319 F.3d 902, 904 (7th Cir. 2003) (abstention generally proper in cases in which party has opportunity to raise constitutional arguments in state court).

To the extent that plaintiff is asking this court to review and reverse the decisions of the state court, I have no authority to grant his request. In Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486 (1983), the United States Supreme Court held that federal district courts lack jurisdiction to entertain appeals of the decisions of a state's highest court. The Rooker-Feldman doctrine has been extended to apply to decisions of lower state courts. E.g., Ritter v. Ross, 992 F.2d

750, 755 (7th Cir. 1993); Keene Corp. v. Cass, 908 F.2d 293 (8th Cir. 1990). Under the doctrine, a litigant may not obtain review of a state court judgment merely by recasting it as a civil rights action under § 1983. Ritter, 992 F.2d at 754. Rooker-Feldman bars a federal court from entertaining not only claims actually reviewed in state court but also other claims, including constitutional claims, that are "inextricably intertwined" with the claims heard by the state court. Leaf v. Supreme Court of Wisconsin, 979 F.2d 589, 598 (7th Cir. 1992) (quoting Feldman, 460 U.S. at 486).

Finally, defendant Judge Schwartz has absolute judicial immunity from liability for his judicial acts. The doctrine of judicial immunity establishes the absolute immunity of judges from liability for their judicial acts, even when they act maliciously or corruptly. Mireles v. Waco, 502 U.S. 9 (1991). This immunity is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, which has an interest in a judiciary free to exercise its function without fear of harassment by unsatisfied litigants. Pierson v. Ray, 386 U.S. 547, 554 (1967).

B. Defendant Sinnott

Plaintiff's claim against defendant Stephen Sinnott is unclear. Without alleging any supporting facts, plaintiff asks only that "the US Attorney be enjoined to prosecute any obstructions by UWS Police related to Federal Depository Library. . ." Apparently, plaintiff

seeks to avoid a potential federal prosecution. However, without a pending federal case, this court lacks jurisdiction to consider plaintiff's request. If in the future, plaintiff faces charges in federal court, he may raise his concerns at that time. For plaintiff's sake, I note that prosecutors are entitled to absolute immunity for preparing for and initiating a prosecution. Buckley v. Fitzsimmons, 509 U.S. 259, 272-73 (1993).

Plaintiff's request for leave to proceed in forma pauperis in a suit seeking to enjoin state court and future federal court proceedings will be denied. In addition, because petitioner's complaint must be dismissed, his motion for a permanent injunction will be denied as moot.

ORDER

IT IS ORDERED that plaintiff John W. Moore's request for leave to proceed in forma pauperis is DENIED and this case is DISMISSED WITH PREJUDICE for want of federal jurisdiction. The clerk of court is directed to close this case.

Entered this 27th day of August, 2009.

BY THE COURT:

/s/

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BARBARA B. CRABB
District Judge